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August 19, 1983

²The HEERA is codified at Government Code section 3560 et seq.

librarians bargaining unit at the University of California (UC). Thereafter, the University Council, American Federation of Teachers (AFT) filed a request for reconsideration of the Board's exclusionary decisions. UC filed a response to this request urging that the Board deny reconsideration.

AFT makes several objections to the Board's exclusionary decisions in the professional librarians unit. It raises the previously argued objection that the UC declarations are merely conclusory and lack sufficient facts to establish a prima facie case for exclusion of supervisory and managerial employees.³ AFT concomitantly objects that the Board first announced its standard of a prima facie case in the March 23, 1983 decision, so that AFT was not afforded an opportunity to provide rebuttal evidence to UC's declarations. Finally, AFT argues that it was not possible to obtain counter-declarations to rebut the declarations submitted by UC because it was difficult to communicate with employees designated supervisory and managerial. In its request for reconsideration, AFT also indicates that it has obtained counter-declarations from approximately 100 individuals who have been determined to be

³The procedure regarding declaration evidence was previously described in the Board's decision, In the Matter of; Unit Determination for Professional Scientists and Engineers, Lawrence Livermore National Laboratory, of the University of California Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act) (3/8/83) PERB Decision No. 246b-H.

supervisory or managerial. It asserts that PERB should now consider these counter-declarations and permit all of the contested individuals to vote challenged ballots in the election or reverse its prior decision and decide the exclusions based on the information now available.

UC argues in its response to AFT's request for reconsideration that AFT has not shown any "prejudicial errors of fact or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence" within the meaning of PERB rule 32410.4 UC also notes that the entire procedure

⁴PERB rule 32410, governing requests for reconsideration, provides:

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. An original and 5 copies of the request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

(b) Any party shall have 20 days from service to file a response to the request

regarding the establishment of a prima facie case was explained in the Board's September 15 Supplement to Pre-hearing Notice and Order of August 12, 1982, so that AFT was on notice that it could elect either to object to UC's declarations on prima facie grounds or, in the alternative, to file counter-declarations.⁵

for reconsideration. An original and 5 copies of the response shall be filed with the Board itself in the headquarters office. Service and proof of service of the response pursuant to Section 32140 are required.

(c) The filing of a request for reconsideration shall not operate to stay the effectiveness of a decision of the Board itself unless otherwise ordered by the Board itself.

PERB rules are codified at California Administrative Code, title 8, section 31001 et seq.

⁵The September 15 Supplement to Pre-hearing Notice and Order of August 12, 1982, provided in pertinent part:

[E]mployee organizations must submit legally sufficient counter-declarations . . . unless they choose to oppose a proposed exclusion by specifying the basis for asserting that a prima facie case has not been stated. I wish to make it clear that this is an either/or option. If an organization chooses, in this investigation, to oppose a proposed exclusion based on the failure of the University to state a prima facie case, it will not be granted an additional opportunity to oppose the exclusion on the merits. (Emphasis in original.)

UC also points out that the AFT counter-declarations could have been obtained and submitted before rather than after the Board's decision issued.

The Board denies AFT's request for reconsideration for failure to show "extraordinary circumstances" within the meaning of PERB rule 32410, supra. The Board fully considered the sufficiency of the UC declarations in Decision No. 247b-H, supra. It found the declarations adequate, especially in the absence of counter-declarations which could have been submitted by AFT. The fact that AFT was able to obtain counter-declarations after the issuance of the Board's decision negates its argument that they were unobtainable in the period before the Board's decision. Finally, AFT was on notice that it had the election of challenging the prima facie validity of UC's declarations or, in the alternative, submitting counter-declarations. This was explained in the Board's September 15 Supplement to Pre-hearing Notice and Order of August 12, 1982, supra. AFT made its election and did not submit counter-declarations.

Thus, AFT has not shown prejudicial errors of fact or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence. Its request for reconsideration is denied.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that the request for reconsideration of the supervisory and managerial exclusions from the professional librarians bargaining unit at the University of California, filed by the University Council, American Federation of Teachers, is DENIED for failure to show extraordinary circumstances.

By the BOARD